(96) A.F.R.

HIGH COURT OF JUDICATURE AT BILASPUR (CHHATTISGARH)

Writ Petition No.84 of 2004

PETITIONER: Ajit Pramod Kumar Jogi
Aged about 58 years,
S/o Late K.P. Jogi, Resident
of Karuna, Civil Lines,
District: Raipur (C.G.).

Versus

RESPONDENTS:

1. Union of India, Through Secretary, Ministry of Home, Government of India, New Delhi.
2. Director, Central Bureau of Investigation, CGO Complex, Lodhi Road, New Delhi.
3. Superintendent of Police, Central Bureau of Investigation, District: Raipur, Chhattisgarh.
4. State of Chhattisgarh through its Home Secretary, Government of Chhattisgarh, District Raipur.
5. State Anti Corruption Bureau, Through Superintendent of Police, District: Raipur, Chhattisgarh.

POST FOR ORDER ON 6th FEBRUARY, 2004

Sd/-
L.C. Bhadoo
Judge

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4. State of Chhattisgarh through its Home Secretary, Government of Chhattisgarh, District Raipur.
5. State Anti Corruption Bureau, Through Superintendent of Police, District: Raipur, Chhattisgarh.

Present:

Dr. Rajendra Singh, Senior Advocate with Shri Vivek Tankha, Senior Advocate, Shri V.D. Bajpayee, Senior Advocate, Shri Dhirendra Mishra, Advocate, Shri Pratul Shandilya, Advocate, Shri Amit Shrivastava, Advocate and Shri Vivek Sharma, Advocate on behalf of the petitioner.

Shri Vinay Harit, Senior Central Government Standing Counsel with Shri Ramakant Mishra, Additional Standing Counsel for Union of India/respondent Nos. 1, 2 and 3.

Shri Ravish Agrawal, Advocate General with Shri Sunil Sinha, Additional Advocate General and Shri Sanjay K. Agrawal, Deputy Advocate General for the State.

Shri Prashant Mishra, Advocate for the intervener.

ORDER

(Passed on 6th February, 2004)

As per L.C. Bhadoo J.

The petitioner who is the Ex. Chief Minister of the State of Chhattisgarh has preferred this writ petition under Articles 226/227 of the Constitution of India whereby he has challenged the legality, correctness and authenticity of registration of F.I.R. RC. 7(A)/2003 dated 9-12-2003 for the commission of the offences under Sections 7, 12, 13 (1) (d), 13(2) and 15 of the Prevention of Corruption Act, 1988 and under Section 120-B and Section 34 of the Indian Penal Code and for quashing of the same on the ground that the same does not disclose any cognizable offence warranting further inquiry and investigation.

2. Brief facts giving rise to filing of this petition are that the general elections for the Legislative Assembly of the State of Chhattisgarh was held on 1st December 2003 and the results of the same were declared on 4th December 2003. The petitioner at the relevant time was the Chief Minister and till the new Chief Minister was sworn in on 7th December 2003 the petitioner was working as Acting Chief Minister. After declaring the results on 4th December 2003, the Indian National Congress secured 37 seats, Bhartiya Janata Party secured 50 seats, B.S.P. secured 2 seats and the National Congress Party secured 1 seat.

3. As per the First Information Report (Annexure-R/1) lodged on 7-12-2003 at 2 am by Shri Virendra Pandey at the Police Station Anti Corruption Bureau, Raipur. The Acting Chief Minister Shri Ajit Jogi, his son

Amit Jogi and Shri B.R. Khunte, Member of Parliament had entered into a criminal conspiracy to split the newly elected M.L.A.s of Bhartiya Janata Party by giving them a bribe of Rs.45 lakhs and in furtherance of that conspiracy on 5-12-2003 in the afternoon he received the telephonic call from Shri B.R. Khunte that if efforts are made, Shri Baliram Kashyap can become the Chief Minister and in this respect Shri Ajit Jogi can also render his help. When he enquired from Shri Khunte how it is possible then he replied that if out of the newly B.J.P. M.L.A.s six M.L.A.s break the party then Mr. Jogi will ensure that those M.L.A.s receive the support of 37 M.L.A.s of Congress, 2 M.L.A.s of B.S.P. and one M.L.A. of National Congress Party. Then he asked him to telephone after two hours and after two hours Mr. Khunte again telephoned him then he again asked Mr. Khunte to telephone in the night, but he expressed his inability to telephone in the night and said that he would telephone in the morning. In the meantime, he installed the voice-recording instrument on his telephone number 2442766 and when in the morning Mr. Khunte telephoned him, his conversation was recorded. From his conversation with Mr. Khunte, he could sense and assess that they have conspired to break some B.J.P. M.L.A.s by giving them bribe to ensure that with the support of those M.L.A.s Baliram Kashyap is stalled as Chief Minister. In that respect Mr. Khunte assured him the support of Mr. Ajit Jogi and after his talk with Khunte, Mr. Jogi also telephoned him on the same number and the conversation with Mr. Ajit Jogi has also been recorded in the cassette which he was producing. During the telephonic conversation, Mr. Jogi assured him of political help as well as financial help and he said that he would be sending Rs.15-20 lakhs through Mr. Khunte and in that sequence after two hours Mr. Khunte telephoned him and informed that Rs.20 lakhs has reached to him, he would be sending along with his son Bunti. After reaching near the Mining Department building he telephoned from his telephone number 5031201 and after some time Bunti came in an ambassador car and on the rear seat of the ambassador car there were two bags one of which was black colour and the other was white. Those bags were taken by his driver and kept in his vehicle. Thereafter he informed the Central Leaders about the receipt of the money

and about the conversation recorded on the cassette. They advised him to proceed further. Thereafter he was continuously in touch with Mr. Khunte over telephone and he informed Mr. Khunte that Mr. Baliram Kashyap would be coming at about 7-8 in the evening and on his arrival the programme would be arranged for the meeting with Mr. Jogi. At about 7 pm Baliram Kashyap came to him and he informed that on the way he had a talk with Mr. Jogi and Mr. Jogi assured him that he would help him in becoming the Chief Minister.

4. Mr. Baliram Kashyap informed him that after reaching Raipur he would talk to Mr. Jogi. Thereafter he talked to Mr. Jogi and Mr. Jogi informed him that Mr. Som Prakash Giri would tell us as to at which place they will meet and ultimately it was decided to meet at an isolated place near Radiant School. Mr. Jogi informed that Mr. Som Prakash Giri would be with them who would meet at Bhagat Singh Chowk. At about 8-9 pm in the night he along with Baliram Kashyap, Mr. Som Prakash Giri, the body guard of Mr. Kashyap and his driver started by a Scorpio vehicle of Baliram Kashyap. After some time the vehicle was parked on the Uperwara road. Thereafter one car came from behind, stopped and proceeded ahead. After 15-20 minutes one Tata saphari, black colour car, without number came, that car also went ahead us. Mr. Jogi was in that car. That car stopped after some distance and he along with Mr. Baliram Kashyap and Som Prakash Giri also boarded that car and sat with Mr. Jogi on the rear seat and the conversation took place in the vehicle. During that conversation Mr. Jogi gave a letter of support. Our vehicle was following the vehicle of Mr. Jogi and while returning Mr. Jogi stopped the car and they alighted from the car. At that time one boy known to Mr. Jogi came in another vehicle and he came near Amit Jogi to whom he said that the goods which are kept in your car give to them and those goods were Rs.25 lakhs. That boy sat in our vehicle and the vehicle of Mr. Jogi left the scene. He along with Baliram Kashyap and that boy started in their vehicle and on Uperwara turn one white long car was standing which was without number, near that car boy stopped the vehicle and a blue bag which was kept on the rear side, about that he said that Rs.25 lakhs are in this bag and Mr. Jogi left

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Mr. Giri at that place. He sat in their vehicle. They left the black car and directly came to the office where the press conference was arranged. Since Rs.45 lakhs were with them, therefore, there was a question of security, so he disclosed that fact in the conference and that is why he is submitting with this report the cash amount, cassette and the letter of Mr. Jogi addressed to His Excellency, the Governor. Mr. Jogi who is a public servant, he in conspiracy with Mr. Khunte arranged for the bribe for taking the political advantage in order to ensure that Mr. Kashyap is stalled as Chief Minister.

5. On receiving this report the Inspector of Police, Anti Corruption Bureau, Chhattisgarh, Raipur registered F.I.R. under Sections 13(1) (d), 13(2), 12 and 15 of the Prevention of Corruption Act, 1988 and Sections 34 and 120-B of the Indian Penal Code. Thereafter consequent upon the consent notification of the Government of Chhattisgarh dated 8th December, 2003 the Cabinet Secretariat, Govt. of India vide its notification dated 9-12-2003 transferred the investigation of the case F.I.R. No.9/2003 dated 7-12-2003 to Central Bureau of Investigation.

6. As per the averment made in para 5.2 of the petition, it has been mentioned that the petitioner at the outset denies the authenticity and correctness of the alleged F.I.R. lodged against him and others wishes to challenge the report as not disclosing any cognizable offence warranting further investigation, inquiry or trial as per the provisions of the Code of Criminal Procedure and it has been mentioned that the facts do not disclose the commission of the offences under the aforesaid sections. It has further been mentioned that Mr. Jogi, his son Amit Jogi, Shri Khunte by themselves could not have been conspired to carry out an illegal act or use illegal means for the furtherance of the illegal act without the genuine participation of Shri Virendra Pandey and Baliram Kashyap. The petitioner admittedly had no contact with the alleged newly elected BJP Legislatures, nor any attempt was made by the petitioner to reach these M.L.A.s by or through any overt or covert method.

7. In the absence of a criminal conspiracy between Mr. Virendra Pandey, Baliram Kashyap and the petitioner no such alleged offence could be planned, attempted or finally executed. The F.I.R. discloses no such agreement and in fact contains information of a stage-managed show. A complaint of an instigated or a staged offence cannot be construed as constituting the primary elements of the offence of criminal conspiracy. To constitute the basic elements of Section 7/11 read with Section 12 of the Prevention of Corruption Act a conspiracy to commit the substantive offence under Section 7/11 was necessary. At no point of time the complainant namely, Virendra Pandey and Baliram Kashyap were in criminal conspiracy with the petitioner and some others. In fact, according to the complaint, it was trick bring played upon the petitioner. In law the petitioner cannot commit the alleged offences based upon an alleged and illegitimate trap of the complainant trickster.

8. The contents of any such F.I.R. will not satisfy the elements of even a prima facie offence under Section 7/11 read with Section 12 of the Prevention of Corruption Act. The F.I.R. does not disclose the basic facts and basic elements of the cognizable contours of Section 13 (1)(d), 13(2) read with Section 15 of the Prevention of Corruption Act. Ultimately, it has been prayed that the respondents be directed to produce the F.I.R., case diary and records pertaining to the case and writ of certiorari or any other appropriate writ or direction be issued to quash the First Information Report dated 5/6th November 2003 lodged by Mr. Virendra Pandey as not disclosing any offence and consequently warranting no further investigation under the provisions of Delhi Police Establishment Act.

9. Preliminary return of objections has been filed on behalf of respondents 1 to 3 in which it has been mentioned that respondent Nos. 2 and 3 are responsible officers of the Prime Crime Investigation Agency of the country. The reputation of this investigating agency as a thoroughly professional, impartial and competent agency is common knowledge and the highest degree of trust of the general public it commands does need no proof.

It has further been mentioned that the documents sought to be called by the petitioner for perusal of this Court are of highly classified nature because looking to the seriousness of the crime and likelihood of the involvement of extremely influential persons in the same, at this stage, when the investigation in respect of the same is continuously going on, even a slightest leakage of the investigation and the finding of respondents can cause extreme prejudice to the cause of justice. The petitioner has failed to plead any legally sustainable ground in favour of his contentions that the F.I.R. does not disclose any prima facie cause of action. The F.I.R. contains all the ingredients of the crimes which have been reported to have been committed by the complainant and there are sufficient grounds for proceeding with the investigation in accordance with due process of law. As long as the investigations are not complete and the outcome of the same is not finalized it is quite premature to speculate or have apprehensions without any base at this stage. In case, as a result of the investigations when they are completed, the answering respondents do not find the ingredients of the alleged crimes against the petitioner or against any of the suspects the answering respondents shall be bound to submit their report accordingly.

10. It is further submitted that even if the answering respondents after completion of the investigation are of the opinion that the crime has been committed and there are grounds for proceeding against any or all of the suspects, the final report prepared by them shall have to undergo judicial scrutiny in accordance with the provisions of law. The petitioner could have moved under Section 482 of the Cr.P.C. and he, by not having done so, is trying to invoke the extraordinary writ jurisdiction of this Court. The petitioner's intention does not seem to be bonafide because by doing so he is trying to get the documents related to the investigation being made public.

11. Reply has also been filed on behalf of respondents 4 and 5 to the same effect.

12. I have heard the learned counsel for the parties.

13. As far as the maintainability of this petition under Articles 226/227 of the Constitution of India is concerned, the Hon'ble Apex Court in the matter of **M/s. Pepsi Foods Ltd. and another V. Special Judicial Magistrate and others** reported in **1998 SUPREME COURT 128** has held that:

> "The High Court can exercise its power of judicial review in criminal matters. Nomenclature under which petition is filed is not quite relevant and that does not debar the court from exercising its jurisdiction which otherwise it possesses unless there is special procedure prescribed which procedure is mandatory. If in a case the court finds that the appellants could not invoke its jurisdiction under Article 226, the court can certainly treat the petition one under Article 227 or Section 482 of the Code."

The Hon'ble Apex Court in the matter of **S.N. Sharma vs. Bipen Kumar Tiwari and others** reported in **AIR 1970 SC 786** has held that "the High Court can invoke the jurisdiction under Article 226 of the Constitution, if the High Court convinced that the power of investigation has been exercised malafidely.

Therefore, as per the settled law for quashing the F.I.R. which does not disclose the prima facie cognizable offence the writ petition can lie under Article 226/227 of the Constitution of India. Even the jurisdiction under Section 482 of the Cr.P.C. can also be invoked. Therefore, to this extent, I do not find any substance in the objection raised by the learned counsel for the respondents.

14. Dr. Rajendra Singh, the learned Senior Advocate with Shri Vivek Tankha, Senior Advocate submitted that a bare reading of the F.I.R. prima facie does not disclose the commission of the offence punishable under Sections 13(1)(d), 13(2), 12 and 15 of the Prevention of Corruption Act and Sections 34 and 120-B of the Indian Penal Code. Learned senior counsel

further submitted that even on the date of the incident the M.L.A.s were newly elected, but so far they had not taken oath, therefore, legally they were not public servant. As per the allegations in the F.I.R., even it is taken as it is, on the invitation of Mr. Virendra Pandey complainant the petitioner contacted him but Mr. Virendra Pandey not being a public servant, therefore, the question of giving bribe to him does not come within the definition of Sections 13(1)(d), 13(2), 12 and 15 of the Prevention of Corruption Act. Moreover, the conversation of Mr. Khunte and Mr.Pandey was as per the allegations in the F.I.R. was invited. He himself had not made any attempt to bribe, therefore, for constituting the offences of Anti Corruption Act, the essential ingredients in the F.I.R. are missing. As far as the commission of the offence punishable under Section 120-B of the IPC is concerned, in order to constitute the offence there must be conspiracy between the two persons to commit illegal act or the act which is not legal by illegal means, such an agreement is designated as criminal conspiracy. As per the allegations in the FIR there was conversation between Mr. Khunte and Mr. Virendra Pandey. Mr. Khunte assured to Mr. Pandey that Mr. Jogi would help him in forming the government by Mr. Baliram Kashyap. Therefore, the essential ingredients are missing in this case in order to constitute the criminal conspiracy. The petitioner was never party to enter into a criminal conspiracy or to commit any illegal act and there are no allegations that Mr. Pandey, Mr. Baliram Kashyap and the petitioner entered into a criminal conspiracy rather the petitioner was roped in a stage-managed show. Therefore, if the F.I.R. is taken on its face value no cognizable offence has been committed by the petitioner. Therefore, F.I.R. should be quashed.

15. On the other hand, Shri Ravish Agrawal, learned Advocate General and Shri Vinay Harit, Senior Central Govt. Standing Counsel argued that as per the F.I.R. Mr. B.R. Khunte, the petitioner and his son entered into a criminal conspiracy to bribe the newly elected B.J.P. M.L.A.s through Virendra Pandey in order to ensure that they break away from the Bhartiya Janata Party and support the candidature of Mr. Baliram Kashyap as the Chief Minister. In

furtherance of that conspiracy Mr. B.R. Khunte contacted to Mr. Virendra Pandey. Even the petitioner contacted to Mr. Virendra Pandey over telephone and in the later part they met at a fixed place, sat in a vehicle and the petitioner handed over the letter addressed to His Excellency, the Governor of State of Chhattisgarh assuring the support of candidature of Mr. Baliram Kashyap as the Chief Minister. All this involvement of the petitioner shows that he was a party to the conspiracy. They further argued that as far as the question of newly elected M.L.A.s were not public servant is concerned, as per rule 66 of Conduct of Election Rules, 1961 a certificate was granted to the newly elected M.L.A.s that they have been elected as the members of the State Legislative Assembly and by that itself they became the M.L.A.s and public servant, therefore, prima facie the offence is made out. They further submitted that the matter is at the initial stage and the Court is required to look into the fact that whether as per the allegations in the F.I.R. a cognizable offence is made out and if the cognizable offence is made out then the Police is bound to register the F.I.R. under Section 154 of the Cr.P.C. and thereafter to proceed with the investigation. The Investigating Agency is at the stage of collecting the evidence and, at this stage, the investigation cannot be interfered by the Court.

16. In order to appreciate the arguments advanced by the learned counsel for the parties, if we look into the relevant provisions of the Criminal Procedure Code, Section 2 (h) of the Cr.P.C. defines that "investigation" includes all the proceedings under this Code for the collection of evidence conducted by a police officer or by any person who is authorized by a Magistrate in this behalf'. It ends with the formation of the opinion as to whether on the material collected, there is a case to place the accused before a Magistrate for trial and if so, taking the necessary steps for the same by filing of a charge sheet under Section 173. Chapter-XII of the Code of Criminal Procedure deals with "Information to the Police and their powers to investigate." Section 154 provides that every information relating to the commission of a cognizable offence, if given orally to an officer in charge of a

police station, shall be reduced to writing by him or under his direction, and the substance thereof shall be entered in a book to be kept by such officer in such form as the State Government may prescribe in this behalf. Sub-section (1) of Section 156 envisages that any officer in charge of a police station may, without the order of a magistrate, investigate any cognizable offence which a Court having jurisdiction over the local area within the limits of such station would have power to inquire into or try under the provisions of chapter XIII. Sub section (2) of this Section provides that no proceeding of a police officer in any such case shall at any stage be called in question on the ground that the case was one which such officer was not empowered under this section to investigate.

17. Section 157 lays down that if, from information received or otherwise, an officer in charge of a police station has "reason to suspect the commission of an offence" which he is empowered under section 156 to investigate, he shall proceed in person or shall depute one of his subordinate officers to proceed to the spot to investigate the facts and circumstances of the case and, if necessary, to take measures for the discovery and arrest of the offender. Sections 160 to 163 deal with the power of the police officer making an investigation under chapter XII to require the attendance of all witnesses, and their examination. Sections 165 and 166 confer power upon a police officer making investigation to search or cause search to be made. Section 169 authorises a police officer to release a person from custody on his executing a bond, to appear, if and when so required, before a magistrate in case upon an investigation under chapter XII it appears to the officer in charge of the police station that there is not sufficient evidence or reasonable ground of suspicion to justify the forwarding of the accused to a magistrate. Section 170 empowers the officer in charge of a police station to forward the accused under custody to a competent magistrate or to take security from the accused for his appearance before the magistrate in case where the offence is bailable, if after investigation it appears that there is sufficient evidence or reasonable ground for doing so. Section 173 and sub

section (2) thereof lays down that after the investigation is completed, the officer in charge of the police station shall forward to a magistrate empowered to take cognizance of the offence on a police report, a report in the form prescribed by the State Government giving details of the matters enumerated in clauses (a) to (g) of this sub-section.

18. Chapter XIV of the Code of Criminal Procedure deals with "Conditions Requisite For Initiation of Proceedings." Section 190 deals with cognizance of offences by magistrate and it provides that a magistrate may take cognizance of any offence. The provisions of Chapter XII of the Code show that detail and elaborate provisions have been made for securing that an investigation takes place regarding an offence of which information has been given and the same is done in accordance with the provisions of the Code. The manner and the method of conducting the investigation are left entirely to the officer in charge of the police station or a subordinate officer deputed by him. A magistrate has no power to interfere with the same. The formation of the opinion whether there is sufficient evidence or reasonable ground of suspicion to justify the forwarding of the case to a magistrate or not as contemplated by sections 169 and 170 is to be that of the officer in charge of the police station.

19. In the matter of **Emperor v. Nazir Ahmad** reported in **AIR 1945 PC 18** the Privy Council has held that:

> "In India as has been shown there is a statutory right on the part of the police to investigate the circumstances of an alleged cognizable crime without requiring any authority from the judicial authorities, and it would, as their Lordships think, be an unfortunate result if it should be held possible to interfere with those statutory rights by an exercise of the inherent jurisdiction of the court. The functions of the judiciary and the police are complementary not overlapping and the combination of

> individual liberty with a due observance of law and order is only to be obtained by leaving each to exercise its own function, always, of course, subject to the right of the court to intervene in an appropriate case when moved under section 491, Criminal P.C., to give directions in the nature of habeas corpus. In such a case as the present, however, the court's functions begin when a charge is preferred before it and not until then."

In the matter of **H.N. Rishbud & S.N. Basak** the Hon'ble Apex Court has held that:-

> "The investigation under the Code, takes in several aspects, and stages, ending ultimately with the formation of an opinion by the police as to whether, on the material covered and collected, a case is made out to place the accused before the magistrate for trial, and the submission of either a charge sheet or a final report is dependent on the nature of the opinion, so formed. The formation of the said opinion, by the police, is the final step in the investigation, and that final step is to be taken only by the police and by no other authority."

20. The Hon'ble Apex Court in the matter of **S.N. Sharma vs. Bipen Kumar Tiwari and others** reported in **AIR 1970 SC 786** has held that "it appears to us that though the Code gives to the police unfettered power to investigate all cases where they suspect that a cognizable offence has been committed, in appropriate cases an aggrieved person can always seek a remedy by invoking the power of the High Court under Article 226 of the Constitution under which, if the High Court could be convinced that the power of investigation has been exercised by a police officer malafide, the High Court can always issue a writ of mandamus restraining the police officer from misusing his legal powers.

21. In the matter of **West Bengal v. Swapan Kumar Guha** reported in **AIR 1982 SC 949** Shri Chandrachud, Hon'ble the Chief Justice while agreeing with the judgment of Justice A.P. Sen with which judgment Justice Vardarajan also agreed, has stated that "if the F.I.R. does not disclose the commission of a cognizable offence, the Court would be justified in quashing the investigation on the basis of the information as laid or received." Hon'ble Justice A.P. Sen who wrote the main judgment in that case with which Chandrachud C.J. and Varadarajan, J. agreed has laid the legal proposition as follows:

> "……the legal position is well settled. The legal position appears to be that if an offence is disclosed, the Court will not normally interfere with an investigation into the case and will permit investigation into the offence alleged to be completed; if, however, the materials do not disclose an offence, no investigation should normally be permitted."

Again in the matter of **Madhavrao Jiwaji Rao Scindia v. Sambhajirao Chandrojirao Angre** reported in **AIR 1988 SC 709** the Hon'ble Apex Court has held that "the legal position is well settled that when a prosecution at the initial stage is asked to be quashed, the test to be applied by the Court is as to whether the uncontroverted allegations as made prima facie establish the offence. It is also for the Court to take into consideration any special features which appear in a particular case to consider whether it is expedient and in the interest of justice to permit a prosecution to continue."

22. The Hon'ble Apex Court in the matter of **State of Bihar v. Murad Ali Khan** reported in **AIR 1989 SC 1** has stated that "the jurisdiction under Section 482 of the Code has to be exercised sparingly and with circumspection and has given the working that in exercising that jurisdiction, the High Court should not embark upon an enquiry whether the allegations in the complaint are likely to be established by evidence or not" and also in the

Bhajan Lal's case (supra), in para-108 of the judgment 7 categories has been laid down by the Hon'ble Apex Court where the Court can exercise the power under Articles 226 of the Constitution or under Section 482 of the Cr.P.C. and out of those seven categories in the present case the relevant categories are (i) 'where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused', (ii) Where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code.'

23. The Hon'ble Apex Court in the matter of **State of Haryana and others vs. Ch. Bhajan Lal and others (Supra)** in para-31 has held that "An overall reading of all the Codes makes it clear that the conditions which is sine qua non for recording a First Information Report is that there must be an information and that information must disclose a cognizable offence and if any information disclosing a cognizable offence is laid before an officer in charge of a police station satisfying the requirements of Section 154(1) of the Code, the said police officer has no other option except to enter the substance thereof in the prescribed form, that is to say, to register a case on the basis of such information. And it has further been held in the judgment that under Section 157 an officer in charge of a police station who from information received or otherwise, has reason to suspect the commission of an offence- that is a cognizable offence, he is required to either proceed in person or depute any of his subordinate officers, to proceed to the spot, to investigate the facts and circumstances of the case and if necessary, to take measures for the discovery and arrest of the offender. As per sub-section (2) of Section 157 the officer in charge of the police station is required to forward the report to the Magistrate and as per the provisions of Section 157(1) an officer in charge of the police station can without an order of a Magistrate, investigate any cognizable case, and it has further been held in this judgment

by the Apex Court that "reason to suspect" has to be governed and dictated by the facts and circumstances of each case and at that stage the question of adequate proof of facts alleged in the first information report does not arise and the condition precedent to the commencement of the investigation under Section 157 (1) of the Code is the existence of the reason to suspect the commission of a cognizable offence which has to be, prima facie, disclosed by the allegations made in the first information laid before the police officer under Section 154 (1). In para-54 it has been held that the commencement of investigation by a police officer is subject to two conditions, firstly, the police officer should have reason to suspect the commission of a cognizable offence as required under Section 157(1) and secondly, the police officer should subjectively satisfy himself as to whether there is sufficient ground for entering on an investigation even before he starts an investigation into the facts and circumstances of the case as contemplated under clause(b) of the proviso to Section157(1) of the Code.

24. Again the Hon'ble Apex Court in the matter of **RAJESH BAJAJ V. STATE NCT OF DELHI AND OTEHRS** reported in **(1999) 3 Supreme Court Cases 259** has held that "It is not necessary that a complainant should verbatim reproduce in the body of his complaint all the ingredients of the offence he is alleging. Nor is it necessary that the complainant should state in so many words that the intention of the accused was dishonest or fraudulent. Splitting up of the definition into different components of the offence to make a meticulous scrutiny, whether all the ingredients have been precisely spelled out in the complaint, is not the need at this stage. If factual foundation for the offence has been laid in the complaint the Court should not hasten to quash criminal proceedings during investigation stage merely on the premise that one or two ingredients have not been stated with details. For quashing an FIR (a step which is permitted only in extremely rare cases) the information in the complaint must be so bereft of even the basic facts which are absolutely necessary for making out the offence. Similar view has been taken by the Hon'ble Apex Court in the matter of **M. NARAYANDAS V.**

STATE OF KARNATAKA & OTHERS reported in **JT 2003 (Suppl.1) SC 412.** In para-33 it has been held that " it is, therefore, manifestly clear that if any information disclosing a cognizable offence is laid before an officer in charge of a police station satisfying the requirements of section 154 (1) of the Code, the said police officer has no other option except to enter the substance thereof in the prescribed form, that is to say, to register a case on the basis of such information and the field of investigation of any cognizable offence is exclusively within the domain of the investigating agencies over which the Courts cannot have control and have no power to stifle or impinge upon the proceedings in the investigation so long as the investigation proceeds in compliance with the provisions relating to investigation.

25. The Hon'ble Apex Court in the matter of **Union of India v. Prakash P. Hinduja and another** reported in **JT 2003 (5) SC 300** in paras- 18 & 19 of the judgment has held that:

> "There is a clear-cut and well demarcated sphere of activity in the field of crime detection and crime punishment. Investigation of an offence is the field exclusively reserved for the executive through the police department the superintendence over which vests in the State Government. The executive which is charged with a duty to keep vigilance over law and order situation is obliged to prevent crime and if an offence is alleged to have been committed it is its bounden duty to investigate into the offence and bring the offender to book. Once it investigates and finds an offence having been committed it is its duty to collect evidence for the purpose of proving the offence. Once that is completed and the investigating officer submits report to the court requesting the court to take cognizance of the offence under section 190 of the Code its duty comes to an end.

On a cognizance of the offence being taken by the court the police function of investigation comes to an end subject to the provision contained in section 173(8), there commences the adjudicatory function of the judiciary to determine whether an offence has been committed and if so, whether by the person or persons charged with the crime by the police in its report to the court, and to award adequate punishment according to law for the offence proved to the satisfaction of the court. There is thus a well defined and well demarcated function in the field of crime detection and its subsequent adjudication between the police and the magistrate. This had been recognized way back in **King Emperor v. Khwaja Nazir Ahmad (AIR 1945 PC 18)** where the Privy Council observed as under:

.....

....."

In para 26 it was observed that the power of the police to investigate into a cognizable offence is ordinarily not to be interfered with by the judiciary."

"The legal position is absolutely clear and also settled by judicial authorities that the court would not interfere with the investigation or during the course of investigation which would mean from the time of the lodging of the first information report till the submission of the report by the officer in charge of the police station in court under Section 173(2) Cr.P.C., this field being exclusively reserved for the investigating agency."

26. Again the Hon'ble Apex Court in the matter of **SUPERINTENDENT OF POLICE, CBI AND OTHERS VS. TAPAN KUMAR SINGH** reported in

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(2003) 6 Supreme Court Cases 175 has held that "what is of significance is that the information given must disclose the commission of a cognizable offence and the information so lodged must provide a basis for the police officer to suspect the commission of a cognizable offence. At this stage it is enough if the police officer on the basis of the information given suspects the commission of a cognizable offence, and not that he must be convinced or satisfied that a cognizable offence has been committed. If he has reasons to suspect, on the basis of information received, that a cognizable offence may have been committed, he is bound to record the information and conduct an investigation. At this stage it is also not necessary for him to satisfy himself about the truthfulness of the information. It is only after a complete investigation that he may be able to report on the truthfulness or otherwise of the information. Similarly, even if the information does not furnish all the details he must find out those details in the course of investigation and collect all the necessary evidence. The information given disclosing the commission of a cognizable offence only sets in motion the investigative machinery, with a view to collect all necessary evidence, and thereafter to take action in accordance with law. The true test is whether the information furnished provides a reason to suspect the commission of an offence, which the police officer concerned is empowered under Section 156 of the Code to investigate. If it does, he has no option but to record the information and proceed to investigate the case either himself or depute any other competent officer to conduct the investigation. The question as to whether the report is true, whether it discloses full details regarding the manner of occurrence, whether the accused is named, and whether there is sufficient evidence to support the allegations are all matters which are alien to the consideration of the question whether the report discloses the commission of a cognizable offence. Even if the information does not give full details regarding these matters, the investigating officer is not absolved of his duty to investigate the case and discover the true facts, if he can.

27. In the matter of **State of Madhya Pradesh v. Awadh Kishore Gupta and Ors.** reported in **JT 2003 (9) SC 284,** in para-11 the Hon'ble Apex Court has held that:

> "The powers possessed by the High Court under Section 482 of the Code are very wide and the very plenitude of the power requires great caution in its exercise. Court must be careful to see that its decision in exercise of this power is based on sound principles. The inherent power should not be exercised to stifle a legitimate prosecution. High Court being the highest court of a State should normally refrain from giving a prima facie decision in a case where the entire facts are incomplete and hazy, more so when the evidence has not been collected and produced before the Court and the issues involved, whether factual or legal, are of magnitude and cannot be seen in their true perspective without sufficient material. Of course, no hard and fast rule can be laid down in regard to cases in which the High Court will exercise its extraordinary jurisdiction of quashing the proceeding at any stage. It would not be proper for the High Court to analyse the case of the complainant in the light of all probabilities in order to determine whether a conviction would be sustainable and on such premises, arrive at a conclusion that the proceedings are to be quashed. It would be erroneous to assess the material before it and conclude that the complaint cannot be proceeded with. In proceeding instituted on complaint, exercise of the inherent powers to quash the proceedings is called for only in a case where the complaint does not disclose any offence or is frivolous, vexatious or oppressive. If the allegations set out in the complaint do not constitute the offence of which

> cognizance has been taken by the magistrate, it is open to the High Court to quash the same in exercise of the inherent powers under section 482 of the Code. It is not, however, necessary that there should be meticulous analysis of the case before the trial to find out whether the case would end in conviction or acquittal. The complaint has to be read as a whole. If it appears that on consideration of the allegations in the light of the statement made on oath of the complainant that the ingredients of the offence or offences are disclosed and there is no material to show that the complaint is malafide, frivolous or vexatious, in that event there would be no justification for interference by the High Court. When an information is lodged at the police station and an offence is registered, then the mala fides of the informant would be of secondary importance. It is the material collected during the investigation and evidence led in court which decides the fate of the accused person. The allegations of mala fides against the informant are of no consequence and cannot by itself be the basis for quashing the proceeding.

28. Therefore, in view of the law laid down by the Hon'ble Apex Court in the various judgments referred above, at this stage, while considering the case of the petitioner for quashment of the F.I.R., the Court is required to see as to whether on the alleged facts in the F.I.R., if the facts are taken at their face value and accepted in their entirety do prima facie constitute any offence or make out a case against the accused and if the facts mentioned in the F.I.R. prima facie disclose cognizable offence, then this Court is not required to look into the veracity, reliability, sufficiency and adequate proof of the facts alleged and to make a meticulous scrutiny and whether all the ingredients have been precisely spelled out in the complaint is not the need at

this stage. If the factual foundation for the offence has been laid in the complaint the Court should not hasten to quash criminal proceeding during investigation stage merely on the premise that one or two ingredients have not been stated with details. If all the above conditions are satisfied, then the inherent power should not be exercised to stifle a legitimate prosecution. The High Court being the highest court of a State should normally refrain from giving a prima facie decision in a case where the entire facts are incomplete and hazy, more so when the evidence has not been collected and produced before the Court and the issues involved, whether factual or legal, are of magnitude and cannot be seen in their true perspective without sufficient material. In **Murad Ali Khan's** case (Supra) the Hon'ble Apex Court has held that the Court should exercise the power sparingly and with circumspection and has given the working that in exercising that jurisdiction, the High Court should not embark upon an enquiry whether the allegations in the complaint are likely to be established by evidence or not. The Court has to exercise its jurisdiction in rarest of rare case only when the Court reaches the conclusion that on the basis of the allegations in the F.I.R. no prima facie offence is constituted and on the facts if the investigation is allowed to be continued then that will lead to failure of the justice.

29. In the light of the above decisions of the Hon'ble Apex Court and the principles enunciated, if we look into the allegations leveled in the present case against the petitioner along with two other persons and as per the role played by the petitioner with other persons named in the F.I.R., meeting with certain persons at an isolated place, currency changing the hands, talks on telephone, letter given assuring the support of a particular person to stall him as Chief Minister, prima facie discloses reasons to suspect the commission of cognizable offences. At this stage, it is neither necessary nor in the interest of everyone to express any opinion and jump over to any conclusion and, at this stage, passing any order will amounts to interference in the field of the Investigating Agency and they should be allowed to continue with the evidence, with all fairness, to collect the evidence and material to form their

final opinion, as envisaged in Sections 169 and 170 of the Code of Criminal Procedure. Therefore, I am of the opinion that the petitioner has not been able to make out a case, which warrants the invoking of the extraordinary jurisdiction by this Court for quashing of F.I.R..

30. As far as the concern expressed by the learned Senior Counsel, during the course of arguments, about the deliberate delay in investigation which may be prejudicial to the petitioner, as the learned Senior Counsel argued that there are apprehensions that the Investigating Agency is likely to delay the investigation and conclude at such stage which may put the petitioner in embarrassing position. In this connection also, I do not find any reasons for doubting fairness and bonafides of the Investigating Agency, as the present Investigating Agency is the highest premiere Investigating Agency of the country and so far every citizen of the country has high hopes and full faith in the present Investigating Agency. However, in order to dispel the doubts raised by the learned Senior Counsel for the petitioner it is expected that the Investigating Agency should expedite the investigation to reach the final conclusion at the earliest in accordance with law.

31. In the result, I do not find any reason to invoke the extraordinary jurisdiction under Article 226/227 of the Constitution for quashing of the F.I.R., at this stage, because the investigation is still at the preliminary stage. Therefore, the petition is liable to be dismissed and it is dismissed.

Sd/-
L.C. Bhadoo
Judge

Barve*